IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Appeal No. 8 OF 1999
In
Company Petition No. 398 of 1996

Hotel Horizon Private Ltd.,)
a Company registered under the)
Companies Act, 1956 having its)
registered office at 37, Juhu Tara Road,)
Juhu Beach, Bombay 400 049.) ... Appellants

vs.

Manish Sharma,)
Proprietor of A.B.C. International)
Corporation, having its registered office)
at 18, Cavel X Lane,)
4, P.H. Purohit Marg, Kalbadevi Road,)
Bombay 400 002.) ... Respondent

Mr. S. M. Shah for the appellants.
None for respondent.

CORAM: R.M.S. KHANDEPARKAR
AND
D. G. KARNIK, JJ.

DATE : 5th June , 2007

ORAL JUDGMENT (Per R.M.S. KHANDEPARKAR J.)

1. This appeal arises from the order dated 2nd December 1998 passed in Company Petition No. 398 of 1996. By the

impugned order the petition filed by the respondent for winding up of the appellant company has been admitted.

2. After issuance of the statutory notice by the respondent herein, neither any reply was sent by the appellant company, nor sufficient cause was shown for not proceeding against the appellant for winding up.

3. The learned Company Judge after hearing the parties, on perusal of the record and after taking note of the three grounds on which the petition was objected by the appellant viz., that the goods supplied were of substandard quality, there was bona fide dispute regarding the amount to be paid as the respondent had charged higher rates, and thirdly that the claim was barred by limitation during the pendency of the petition, held that the appellant had neither produced any evidence nor any material in support of their claim that the goods supplied were of substandard quality, or that there was bona fide dispute about the amount due and payable and further that this court has already held that if the liability subsists on the date of filing of the petition, merely because it stands barred after filing and during the pendency of the

petition, it would not result in cessation of the liability of the company nor it would debar the petitioner from pursuing with the petition for winding up of the company.

4. Learned advocate appearing for the appellant submitted that the appellant is not pressing for the ground that the claim was barred by limitation during the pendency of the petition as the law in that regard is well settled. Hence the challenge is merely on the grounds that the goods supplied were of substandard quality and that there was bona fide dispute regarding the amount to be paid as the respondent had charged higher rates. In support of his contentions , apart from drawing our attention to the correspondence which was entered into between the parties since March 1994 onwards, no other material could be pointed out by the learned advocate which could reveal that pursuant to the supply of the goods, the appellant had raised any dispute regarding the quality of the goods supplied. There is no material which could reveal that the appellant has raised specific dispute regarding the rates of the goods which were supplied to the respondent. To the specific query by the court, as to whether

the appellant had at any time offered the respondent to pay the price at any particular rate other than the rate at which it was claimed by the respondent, the learned advocate for the appellant could not point out any such offer having been made by the appellant at any point of time. Obviously the record nowhere discloses any bona fide dispute having been raised by the appellant regarding the rates of the goods supplied by the respondent. Merely claiming that higher rates were charged for the goods supplied does not amount to raising a bona fide dispute regarding the amount payable for the goods supplied. If there was any dispute regarding the goods supplied and the supplier had charged higher rates, it was the duty of the appellant to point out the correct rate and accordingly offer the price according to such rates. Once the appellant had not offered any such amount to the respondent, the appellant cannot contend that there was a bona fide dispute raised in respect of the rates for goods supplied.

5. As regards the quality of the goods as already observed above there is no material to show that at any point of time the quality of the goods was shown to be of substandard nature

or any dispute in that regard was raised by the appellant prior to 5th March 1994. The said date assumes relevancy because the goods were supplied during the period from July 1993 to October 1993 and the cheques for the amounts of Rs.5197.20, Rs.5000/-, Rs.10,285.05 and Rs.10,000/- issued on 9.9.93, 29.9.93, 5.10.93 and 30.9.93, respectively and all those cheques were dishonoured. It was only after the dishonour of the cheques, the appellant thought of raising the dispute regarding the quality of the goods supplied and the rates of the goods and that too without giving any details about the quality or the correct rates, if any, of the goods. In that regard it is worthwhile to reproduce the contents of the letter dated 5th March 1994 wherein the so called bona fide dispute was sought to be raised for the first time. The relevant portion of the letter reads thus:

> "-- Your rates are found to be quite high compared to the prevailing market rates.
>
> -- Your bills are not in agreement with the challans since they are found always altered / tampered.

-- Often it has been found that the rates charged are higher than the contracted rates.

-- The quality supplied by you is inferior.

-- The supply was restarted with you and on an assurance given by you that the irregularities in your previous contract (Refer Nitin Trading Corporation) occurred would not continue any more."

6. Plain reading of the above portion of the letter dated 5th March 1994 discloses that there were no particulars disclosed in any manner by the appellant as regards either the quality of the goods supplied or regarding the rates of the goods supplied to the appellant. A vague statement to the effect that he had charged higher rates in comparison to the prevailing market rates or that the goods supplied were of inferior quality by itself is not sufficient to say that there was a bona fide dispute raised regarding the goods supplied. It was necessary for the appellant to point out the difference between the prevailing market rates and the rates at which the goods were supplied and also in what manner the quality

of the goods was inferior and to what extent. In the absence of any particulars in that regard, it cannot be said that there was any bona fide dispute regarding the quality or rates of the goods supplied.

7. No other point has been raised in support of the challenge to the impugned order. There is no case made out for interference in the impugned order. The materials on record show that the goods were in fact supplied to the appellant by the respondent and in that regard the amount was required to be paid by the appellant to the respondent and the same was not paid. Even the four cheques issued by the appellant were dishonoured.

8. Our attention was sought to be drawn to the fact that the criminal complaint filed by the respondent was dismissed. Perusal of the said order discloses that the dismissal was on account of the fact that the dispute between the parties was of a civil nature and therefore no criminal liability could have been fastened.

9. In the circumstances there being no case made out for interference in the impugned order and as the appellant has

not been able to discharge the liability to the respondent no fault can be found with the impugned order admitting the petition for winding up against the appellant company. Hence the appeal is dismissed with costs.

10. At this stage learned advocate for the appellant prays for continuation of the interim stay granted at the time of admission of the appeal. Interim stay to continue for a period of 8 weeks.

(R.M.S. KHANDEPARKAR J.)

(D. G. KARNIK J.)